3

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1934

No. 39

NATIONAL PAPER PRODUCTS COMPANY,
PETITIONER,

vs.

GUY T. HELVERING, COMMISSIONER OF
INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 10, 1934

CERTIORARI GRANTED JUNE 4, 1934

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

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PETITIONER,

-vs.

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APPEARANCES.

For Taxpayer:

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J. P. MILLER, Esq.,
W. C. MAGATHAN, Esq.

For Comm'r:

H. A. COX, Esq.,
F. R. SHEARER, Esq.,
E. L. CORBIN, Esq.

Docket No. 39715

NATIONAL PAPER PRODUCTS COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DOCKET ENTRIES.

Transferred to Mr. Murdock 3/28/32

1928

Jul. 9—Petition received and filed. Taxpayer notified. (Fee paid)

" 10—Copy of petition served on General Counsel.

Aug. 7—Answer filed by General Counsel.

" 9—Copy of answer served on taxpayer. Circuit Calendar.

1931

Feb. 10—Stipulation of facts filed.

Mar. 13—Motion for leave to file amended petition filed by taxpayer, amended petition tendered. 3/16/31 granted. 3/19/31 copy served.

Apr. 24—Hearing set June 10, 1931 at Oakland, California.

May 12—Answer to amended petition filed by General Counsel.

Jun. 10—Hearing held before E. H. Van Fossan, Div. 9, on merits. On motion consolidated for hearing and decision with 39701 and 39704. Briefs due in 60 days.

Jul. 13—Transcript of hearing of June 10, 1931 filed.

Aug. 6—Motion for extension of time to Aug. 31, 1931 to file brief filed by taxpayer. August 8, 1931 granted.

" 7—Motion for extension of 60 days for respondent's brief from Auust 9, 1931 filed.

" 11—Motion for extension of 60 days for respondent's brief granted.

" 31—Brief filed by taxpayer.

Oct. 6—Brief filed by General Counsel.

1932

Jan. 21—Motion for leave to file reply brief filed by taxpayer. Granted 1/29/32.

" 29—Reply brief filed by taxpayer. 1/30/32 copy served.

1932

May 17—Findings of fact and opinion rendered, John E. Murdock, Div. 3. Judgment will be entered under Rule 50.

" 21—Notice of appearance of J. Paul Miller as counsel for taxpayer filed.

" 31—Notice of settlement filed by General Counsel.

Jun. 3—Hearing set June 20, 1932 under Rule 50.

" 29—Hearing had before Miss Matthews on settlement under Rule 50. Not contested. Referred to Mr. Murdock for decision.

Jul. 13—Decision entered, Div. 14, Logan Morris.

Oct. 4—Supersedeas bond in the amount of $66,000.00 approved and filed.

" 4—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.

" 4—Proof of service filed.

" 31—Praecipe filed.

" 31—Proof of service filed. [1*]

Nov. 23—Statement of evidence lodged.

" 23—Notice of lodgment of statement with hearing 12/8/32 filed.

" 30—Objections to statement of evidence filed by General Counsel.

Dec. 2—Order of U. S. Circuit Court of Appeals 9th Circuit extending time to 1/3/33, to transmit record filed.

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*Page numbering appearing at the foot of page of original certified Transcript of Record.

1932

Dec. 2—Motion for extension to Jan. 6, 1933 for hearing on statement of evidence filed by taxpayer. 12/28/32 granted for hearing Dec. 28, 1932.

" 15—Proof of service of objections filed by General Counsel.

" 27—Order from U. S. Circuit Court of Appeals 9th Circuit extending time to Feb. 3, 1933 to file transcript filed.

" 28—Order continuing hearing to Jan. 11, 1933 on approval of statement of evidence entered.

" 28—Hearing had before Mr. Sternhagen on approval of statement of evidence. On petitioner's motion continued to Jan. 11, 1933.

1933

Jan. 7—Order from Circuit Court of Appeals, 9th Circuit to transmit petitioner's exhibit No. "1" and respondent's Exhibit "A" in original form filed.

" 11—Hearing had before Mr. Arundell, on approval of statement of evidence. Continued to Jan. 25, 1933.

" 11—Motion to postpone hearing filed by petitioner. Granted to 1/25/33.

" 23—Copy of order from 9th Circuit enlarging time to March 3, 1933 to file transcript filed.

" 25—Hearing had before Mr. Marquette on approval of statement of evidence. On

1933

petitioner's motion continued to Feb. 15, 1933.

Feb. 15—Hearing had before Mr. Murdock on approval of statement of evidence. Agreed statement to be filed.

" 28—Copy of order from U. S. Circuit Court of Appeals, 9th Circuit extending time to 4/3/33 to complete record filed.

Mar. 14—Order from U. S. Circuit Court of Appeals, 9th Circuit consolidating with docket 39701 and 39704 to send up one record filed.

Apr. 3—Order from U. S. Circuit Court of Appeals, 9th Circuit extending time to 5/3/33 to complete record filed.

May 4—Order from U. S. Circuit Court of Appeals, extending time to 6/3/33 to complete record filed.

" 8—Hearing had before Mr. J. E. Murdock, Div. 3 on settlement of statement of evidence. Agreed statement to be filed.

" 19—Agreed statement of evidence lodged.

" 19—Amended praecipe filed.

" 19—Proof of service filed.

" 23—Agreed statement of evidence approved and ordered filed.

Jun. 2—Order from U. S. Circuit Court of Appeals 9th Circuit extending time to 7/3/33 to complete record filed.

" 2—Stipulation that transcript of minutes of hearing held 5/8/33 be included in record filed. [2]

United States Board of Tax Appeals

Docket 39715

NATIONAL PAPER PRODUCTS COMPANY,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION.

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (IT:CR:D:60-D:CAM) dated May 11, 1928, and as a basis for its proceeding alleges as follows:

1. The petitioner is a corporation organized under the laws of the State of California and having its principal place of business at 534 Battery Street, San Francisco, California.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on May 11, 1928.

3. The taxes in controversy are income and profits taxes for the fiscal year ended April 30, 1921, and for Thirty-one Thousand One Hundred Forty-one and 52/100 Dollars ($31,141.52). [3]

The deficiency of $31,141.52 is a portion of a total deficiency of $96,854.59, assessed by the Com-

missioner of Internal Revenue against Zellerbach Paper Company and its subsidiaries for the fiscal year ended April 30, 1921, as follows:

Zellerbach Paper Company (parent)	$64,024.37
National Paper Products Company (subsidiary)	31,141.52
A. S. Hopkins Company (subsidiary)	1,688.70
Total deficiency	$96,854.59

The above total deficiency is based upon certain adjustments made by the Commissioner of the consolidated income of Zellerbach Paper Company, National Paper Products Company, Sanitary Products Corporation and A. S. Hopkins Company. Accordingly, references herein to the petitioner or adjustments of the petitioner's (National Paper Products Company) income will in some cases indicate adjustments applicable to the income of Zellerbach Paper Company as well as the separate income of this petitioner.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

A. ZELLERBACH PAPER COMPANY.

(a) The Commissioner erred in determining the deficiency set forth in his 60-day letter dated May 11, 1928, in respect of the taxes sought to be assessed for the fiscal year ended April 30, 1921, becasue of the assessment of any additional tax for the said fiscal year is barred by

Section 250.(d) of the Revenue Act of 1918; Section 250.(d) . . . . (1) of the Revenue Act of 1921; Section 277.(a) . . . . (1) and Section 277.(a) . . . . (2) of the Revenue Act of 1924; and Section 277.(a) . . . . (2) and Section 277.(a) . . . . (3) of the Revenue Act of 1926.

(b) The Commissioner in determining the deficiency set forth in his 60-day letter dated May 11, 1928, erred in proceeding upon the theory that inasmuch as the petitioner had filed its income tax return under the Revenue Act of 1918, but no additional return was filed by the petitioner under the Revenue Act of 1921, that no statute of limitation applies.

(c) The Commissioner in determining the deficiency set forth in his 60-day letter dated May 11, 1928, erred by ignoring the fact that inasmuch as there were no items of income or deduction in the consolidated income tax return filed by Zellerbach Paper Company requiring to be treated differently under the respective Revenue Acts of 1918 and 1921, and since the rates of income and profits taxes were the same under both Revenue Acts for the fiscal year involved, no additional tax would be shown by the filing of a second return under the 1921 Act; a proper return having been filed under the 1918 Act by this taxpayer. [4]

(d) The Commissioner in determining the deficiency set forth in his 60-day letter dated May 11, 1928, erred in adding $7,293.86 to the

income of Zellerbach Paper Company representing a writedown of the inventory at Batavia, Java, branch from cost to fair market value as at April 30, 1921.

(e) The Commissioner in determining the deficiency set forth in his 60-day letter dated May 11, 1928, erred in adding $2,249.61 to the income of Zellerbach Paper Company representing losses of customers' accounts at Batavia, Java, branch actually determined during the fiscal year ending April 30, 1921.

(f) The Commissioner in determining the deficiency set forth in his 60-day letter dated May 11, 1928, erred in adding $4,167.29 to the income of Zellerbach Paper Company representing an actual loss in value (discovered in February 1928) of an inventory of merchandise as at December 31, 1920, and other assets which had been acquired by Zellerbach Paper Company from A. S. Hopkins Company.

(g) The Commissioner in determining the deficiency set forth in his 60-day letter dated May 11, 1928, erred in disallowing as a deduction from the income of Zellerbach Paper Company $840.00, representing wages paid to the captain of the yacht owned by I. Zellerbach, which yacht was used in connection with the petitioner's business. [5]

B. NATIONAL PAPER PRODUCTS COMPANY

(h) The Commissioner in determining the deficiency set forth in his 60-day letter dated May 11, 1928, erred in disallowing $21,421.05, representing write-down of the value of the wood in process inventory of National Paper Products Company at Carthage, New York, from cost to actual market value as at April 30, 1921.

C. CONSOLIDATED INVESTED CAPITAL

(i) The Commissioner in determining the deficiency set forth in his 60-day letter dated May 11, 1928, erred in excluding from the petitioner's consolidated invested capital the amount of $10,000.00, representing the value of certain patents, which value had been substantiated by the taxpayer.

(j) The Commissioner in determining the deficiency set forth in his 60-day letter dated May 11, 1928, erred in deducting from the petitioner's consolidated invested capital the following items, the determination of the correct amount of which is dependent upon the settlement of taxes in controversy for prior years:

1917, 1918, 1919 taxes adjusted	$496 471.96
1920 taxes prorated	255 340.40
Inadmissibles	685 705.61

[6]

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

The petitioner, National Paper Products Company, is a corporation organized and existing under and by virtue of the laws of the State of California with its principal office at 534 Battery Street, San Francisco, California.

The National Paper Products Company and Sanitary Products Corporation were throughout the fiscal year ended April 30, 1921, wholly owned subsidiaries of Zellerbach Paper Company.

The majority of the capital stock of A. S. Hopkins Company was acquired by the Zellerbach Paper Company on or about October 1, 1920, and the remaining outstanding shares were acquired shortly thereafter, and this subsidiary corporation was dissolved and its assets taken over in liquidation by Zellerbach Paper Company about February 28, 1921, in exchange for the shares of its stock which were cancelled.

The net income of A. S. Hopkins Company for the nine months period ended September 30, 1920, was included in a separate income tax return which was filed with the Collector of Internal Revenue at San Francisco, California, March 15, 1921. The income of A. S. Hopkins Company from and after October 1, 1920, to and including the date of its dissolution, about [7] February 28, 1921, was included in the consoli-

dated income tax return filed by Zellerbach Paper Company and its subsidiaries for the fiscal year ended April 30, 1921. From and after the date of the liquidation of A. S. Hopkins Company, the business which it had formerly conducted at Sacramento, California, was conducted by Zellerbach Company as its Sacramento branch.

Zellerbach Paper Company filed a consolidated income tax return covering its own income and the income of National Paper Products Company and Sanitary Products Corporation for the fiscal year ended April 30, 1921, and also included therein the income of A. S. Hopkins Company from October 1, 1920 to the date of its dissolution. This consolidated income tax return was correctly prepared in accordance with the provisions of the Revenue Act of 1918, which was the revenue act in effect at the time that the said return was due. The said consolidated income tax return filed on July 15, 1921, was the only income tax return that has been filed by the petitioner. All items of income and expense included in Zellerbach Paper Company's operations and in the operations of its subsidiaries are reflected in the said consolidated income tax return filed on July 15, 1921 and are of such nature that the Revenue Act of 1921 is applicable thereto in exactly the same manner as the Revenue Act of 1918. The petitioner, after the enactment of the Revenue Act

of 1921, did not prepare and file another return; such return, if filed, would have been of exactly the same tenor as [8] the return which had already been filed by the petitioner on July 15, 1921, as the various items of income and the expense included in the operations of Zellerbach Paper Company and its subsidiaries were required to be treated exactly the same under both the Revenue Act of 1918 and the Revenue Act of 1921.

The first deficiency notice for the fiscal year ended April 30, 1921, received by the petitioner from the Commissioner of Internal Revenue was mailed to the petitioner on May 11, 1928, being received by the petitioner several days thereafter.

The said first deficiency notice was mailed more than five years after said consolidated income tax return for the fiscal year ended April 30, 1921 was filed, to-wit; approximately six years and ten months thereafter.

The petitioner has never entered into any agreement in writing or otherwise with the Commissioner of Internal Revenue consenting to a later determination, assessment and/or collection of income or profits taxes or extending the time for said determination, assessment and/or collection of tax to any date beyond the statutory limitations provided by the Revenue Acts applicable to the tax for the fiscal year here in issue. The petitioner has never waived the right

to file a petition with the United States Board of Tax Appeals, nor consented to the assessment and collection of any deficiency in tax for the fiscal year ended April 30, 1921. [9]

During the fiscal year ended April 30, 1921 and for a number of years prior thereto, Zellerbach Paper Company had operated a branch at Batavia, Java. Owing to the business depression in Java in the years 1920, 1921 and 1922 a profit of only $6,977.63 was realized from the operations of this branch for the fiscal year ended April 30, 1921. In the succeeding fiscal year conditions were even worse, and the Batavia branch sustained losses aggregating $11,-351.29. In making determination of the profits of the Batavia branch for the fiscal year ending April 30, 1921, it was necessary to write down certain items in the inventory of merchandise from cost to the market value at April 30, 1921. The aggregate reduction of the inventory thus obtained was $7,293.86. Owing to the depressed business conditions, a review of accounts receivable of the Batavia branch indicated that items aggregating $2,249.61 included therein would be uncollectible, and a reserve was set up to take care of these losses.

The Commissioner in making his determination of the petitioner's income disallowed the $7,293.86 write-down of the inventory and the reserve of $2,249.61 to provide for the losses of accounts, upon the theory that the write-down of

inventory was a mere depreciation of inventory and that the loss of accounts receivable provided for by the reserve was merely an estimated loss.

During the fiscal year ended April 30, 1921, and as at about December 31, 1920, Zellerbach Paper Company [10] received as transferee from A. S. Hopkins Company an inventory of certain merchandise and certain accounts receivable owing to A. S. Hopkins Company and other assets. Certain merchandise of A. S. Hopkins Company having a value of $4,167.29 had been previously transferred to Zellerbach Paper Company and charged to it by the Hopkins Company. At the time of taking over the said assets from A. S. Hopkins Company, the value of this merchandise, $4,167.29, was reflected on the books of the Hopkins Company as an account receivable. Owing to the fact that from about October 1, 1920, Zellerbach Paper Company had been in control of A. S. Hopkins Company, the corresponding credit of $4,167.29 had not been recorded on the books of Zellerbach Paper Company as a liability to A. S. Hopkins Company, although the merchandise received from the Hopkins Company had been included in Zellerbach Paper Company's inventories of merchandise, and, thus, when Zellerbach Paper Company took over all the assets of the Hopkins Company, (including the said account receivable of $4,167.29 on the books of A. S. Hop-

kins Company) the value of this account receivable was, in effect, a duplication in value of certain merchandise included in the merchandise inventories of Zellerbach Paper Company, which duplication in value had been taken up as income.

In February 1921, this duplication was discovered, and the amount of $4,167.29 was charged to Zellerbach Paper Company's surplus account. The Commissioner disallowed this [11] charge of $4,167.29 as a deduction and added it to the taxpayer's net income for the fiscal year ended April 30, 1921.

Mr. I. Zellerbach, during the fiscal year ended April 30, 1921, was, and still is, the president of Zellerbach Paper Company. He was the owner of a yacht which he used for the purpose of entertaining business associates and customers of Zellerbach Paper Company and its subsidiary companies. The wages of the captain of this yacht, $840.00 for the fiscal year ended April 30, 1921, were paid by Zellerbach Paper Company and charged to its expenses. The Commissioner disallowed this expense upon the theory that it was not an ordinary and necessary expense of the business.

The National Paper Products Company, at the close of the fiscal year ended April 30, 1921, in taking its inventory at cost or market, whichever is lower, wrote down the value of its inventory of wood in process at its rossing plant

at Aldrich, New York, in the amount of $21,-421.05. Certain timber had been cut and placed in the rossing process and records had been kept of the various costs applied to this timber in the said process. The wood in the inventory was situated at the company's plant at Aldrich, which was some distance from Carthage, New York, the point at which this wood was to be marketed. To determine a market value applicable to this wood in process at Aldrich, the National Paper Products Company first [12] applied the market price at Carthage and thereafter deducted the transportation and other costs which would have to be incurred in bringing this wood from Aldrich to Carthage.

The Commissioner disallowed the said write-down of the wood inventory on the assumption that the market value had not been substantiated.

As at October 5, 1914, the National Paper Products Company acquired certain patents from the Lazar-Aicher Paper Company in exchange for $100,000 par of the capital stock of the National Paper Products Company. Subsequently, cash expenditures of $3,759.05 were made in perfecting these patents, and additional patents were acquired for $10,000 cash. These patents acquired for capital stock were originally set up on the books of the National Paper Products Company at a value of $100,000. By a subsequent book entry, $90,000 of the patent ac-

count was set up in an account designated "Goodwill". This goodwill of $90,000 was, as at April 30, 1916, written off against surplus.

The Commissioner refused to recognize any value as attaching to the patents acquired for capital stock and excluded the amount of $10,000 at which these patents were carried in the fiscal year ended April 30, 1921, in making his determination of the petitioner's consolidated invested capital. [13]

6. The petitioner prays for relief from the deficiency asserted by the Commissioner in the following and each of the following particulars:

(a) The petitioner prays the Board to find that the assessment of any additional tax for the fiscal year ended April 30, 1921, is barred by Section 250 (d) of the Revenue Act of 1918; Section 250 (d) . . . (1) of the Revenue Act of 1921; Section 277 (a) . . . (1) and Section 277 (a) . . . (2) of the Revenue Act of 1924; and Section 277 (a) . . . (2) and Section 277 (a) . . . (3) of the Revenue Act of 1926.

(b) The petitioner prays the Board to find that the Commissioner erred in proceeding upon the theory that inasmuch as no additional return was filed by the petitioner under the Revenue Act of 1921 after a return under the Revenue Act of 1918 had been filed, no statute of limitation applies.

(c) The petitioner prays the Board to find that there are no items of income or deduction

in the consolidated income tax return filed by Zellerbach Paper Company requiring to be treated differently under the respective Revenue Acts of 1918 and 1921, and that the rates of both income tax and excess profits tax for the fiscal year ended April 30, 1921, are the same under the Revenue Acts of 1918 and 1921, and that the filing of [14] an additional return under the Revenue Act of 1921 was not required, as a proper return had been filed under the 1918 Act by the petitioner.

(d) The petitioner prays the Board to find that Zellerbach Paper Company in determining its income for the fiscal year ended April 30, 1921, was entitled to write down its inventory at Batavia, Java, branch by $7,293.86, being the excess of cost over its fair market value as at April 30, 1921.

(e) The petitioner prays the Board to find that Zellerbach Paper Company in determining its income for the fiscal year ended April 30, 1921, was entitled to charge off as a deduction $2,249.61 representing losses of customers' accounts at Batavia, Java, branch actually determined as at April 30, 1921.

(f) The petitioner prays the Board to find that Zellerbach Paper Company in determining its income for the fiscal year ended April 30, 1921, was entitled to deduct therefrom $4,167.29 representing an actual loss in the value of merchandise and other assets which had been ac-

quired by Zellerbach Paper Company from A. S. Hopkins Company.

(g) The petitioner prays the Board to find that Zellerbach Paper Company in determining its net income for the fiscal year ended April 30, 1921, is entitled [15] to claim a deduction for $840.00 representing wages paid to the captain of the yacht owned by I. Zellerbach, used in connection with petitioner's business.

(h) The petitioner prays the Board to find that National Paper Products Company in determining its income for the fiscal year ended April 30, 1921, is entitled to a deduction of $21,421.05 representing write-down of the value of its wood in process inventory at Carthage, New York, as at April 30, 1921.

(i) The petitioner prays the Board to find that it is entitled to have included in the consolidated invested capital of Zellerbach Paper Company and subsidiaries for the fiscal year ended April 30, 1921, the amount of $10,000.00 representing the value of certain patents which had been substantiated, but was disallowed by the Commissioner.

(j) The petitioner prays the Board to find that the Commissioner erred in deducting from the petitioner's consolidated invested capital the following items, the determination of the correct amount of which is dependent upon the settlement of the petitioner's taxes in controversy for prior years:

1917, 1918, 1919 taxes adjusted	$496 471.96
1920 taxes prorated	255 340.40
Inadmissibles	685 705.61

[16]

(k) The petitioner prays for such other and further relief as the nature of the case may require, and which to the Board may seem equitable and proper in the premises.

WHEREFORE, the petitioner prays that the Board may hear and redetermine that there is no deficiency.

JOHN FRANCIS NEYLAN,
Counsel for Petitioner,
Crocker First National Bank Bldg.
San Francisco, California. [17]

State of California,
City and County of San Francisco.—ss.

A. Van der Zwiep, being duly sworn, says that he is the Assistant Secretary of National Paper Products Company, and that he is duly authorized to verify the foregoing petition, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

[Seal National Paper Products Co.]

A. VAN DER ZWIEP.

Subscribed and sworn to before me this 5th day of July, 1928.

(Seal) LULU A. GODSIL,
Notary Public.

Notary Public in and for the City and County of San Francisco, State of California.

My commission expires September 13, 1931. [18]

EXHIBIT A

TREASURY DEPARTMENT
Washington

May 11, 1928

IT:CR:D:60D
CAM
National Paper Products Company,
534 Battery Street,
San Francisco, California.

Sirs:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the year 1921 disclosing a deficiency of $31,141.52, as shown in the attached statement.

The section of the law above mentioned allows you an appeal to the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter. However, if you acquiesce in this determination, you are requested to execute the inclosed Form A and forward it to the Commissioner

of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7.

Respectfully,
D. H. BLAIR,
Commissioner
By (Signed) C. B. ALLEN
Deputy Commissioner

BHB-3
Inclosures:
Statement
Form A.
Form 882. [19]

IT:CR:D:60D
CAM

STATEMENT OF RESULTING TAX LIABILITY

Company	Year	Resulting Tax Liability Deficiency
National Paper Products Company	1921	$31,141.52

The adjustments producing the above-stated results are shown in schedules attached to a letter addressed to Zellerbach Paper Company, San Francisco, California.

Inasmuch as no return was filed under the Revenue Act of 1921, the Bureau holds that no Statute of Limitation applies. [20a]

EXHIBIT A.

TREASURY DEPARTMENT
Washington

May 11, 1928

Office of
Commissioner of Internal Revenue

IT:CR:D:60D
CAM

Zellerbach Paper Company,
534 Battery Place,
San Francisco, California.

Sirs:

In accordance with Section 274 of the Revenue Act of 1926 you are advised that the determination of your tax liability for the year 1921, discloses a deficiency of $65,024.37, as shown in the attached statement.

The section of the law above mentioned allows you an appeal to the United States Board of Tax Appeals within sixty days from the date of the mailing of this letter. However, if you acquiesce in this determination, you are requested to execute the inclosed Form A and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7.

Respectfully,
D. H. BLAIR,
Commissioner.

By (Signed) C. B. ALLEN,
Deputy Commissioner.

Inclosures
Statement.
Form A.
Form 882. [20b]

IT:CR:D:60 D
CAM

STATEMENT OF RETURNS EXAMINED AND RESULTING TAX LIABILITY

Company	Fiscal Year	Form	Deficiency in Tax
Zellerbach Paper Company, San Francisco, Calif.	April 30, 1921	1120 Consolidated	$64,024.37
National Paper Products Company San Francisco, Calif.	April 30, 1921	1120 Consolidated	$31,141.52
A. S. Hopkins Company San Francisco, Calif.	Period Nov. 1, 1920 to April 30, 1921	1120	$ 1,688.70

The adjustments producing the above-stated results are shown in the attached Schedules 1 to 15, inclusive.

The information submitted in your brief dated February 7, 1928, has been carefully considered.

Your contention that "Depreciation on Merchandise" and "Estimated Bad Accounts", included as taxable income in Batavia Branch, were allowable deductions is denied, as your contention is not substantiated.

Your contention that "Inventory Transfer from A. S. Hopkins Company" is an allowable deduction is denied as same is allowed to A. S. Hopkins Company as a deduction, Schedule 6.

Your contention that items charged to dues and subscriptions in the amount of $470.00, are necessary business expenses is allowed for "Membership Fee, Kiwanis Club" and "Subscription to Linweave Association" but denied for "Book Club of California (J. D. Zellerbach)".

Your contention that items charged to headquarters expense are allowable is conceded for the "Cancellation of Contract", but denied for "Salary to captain of J. Zellerbach's private yacht." The mere fact that customers were occasionally entertained on the yacht is not sufficient reason for allowing the deduction.

Your contention relative to the following items, National Paper Products Company is sustained and allowed: [20c]

1. Loss in operation, Brooklyn Soap Plant.
2. Gifts to employees.
3. Unallowable deduction.

Your contention that "Depreciation of Wood Inventory" is allowable is not substantiated.

Your contention for additional depreciation, Carthage Branch has been previously denied for prior years and no evidence having been submitted in your brief to substantiate your claim, the previous denial is sustained.

Your contention that net income for the two months ended December 31, 1920 of A. S. Hopkins Company, should not be included is denied. Evidence shows that the above-named company was affiliated with your company for the period November 1, 1920 to April 30, 1921, accordingly the income for that period is properly income of the consolidation. Adjustment will be made to A. S. Hopkins Company.

Your contention that Patents disallowed from invested capital should be restored in the amount of $10,000.00, has been denied for prior years and that decision is herein sustained.

Your contention for adjustments of taxes prior years and inadmissibles are dependent upon prior years which are still in controversy and no adjustment can be made in this audit.

Inasmuch as no return was filed under the Revenue Act of 1921, the Bureau holds that no Statute of Limitations applies.

A copy of this letter has been mailed to John Francis Neylan in accordance with the authorization contained in your power of attorney dated March 3, 1925, running to him, which is on file in this office.

[Endorsed]: United States Board of Tax Appeals. Filed July 9, 1928. [20d]

[Title of Court and Cause.]

ANSWER

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above-named taxpayer, admits and denies as follows:

1, 2. Admits the allegations in paragraphs 1 and 2.

3. Admits the allegations in paragraph 3, except that he says the deficiencies therein stated have not been assessed.

5. Admits that the petitioner, the National Paper Products Company, is a corporation organized and existing under and by virtue of the laws of the State of California, with its principal office at 534 Battery Street, San Francisco, California. Admits that the petitioner, after the enactment of the Revenue Act of 1921, did not file a return for the fiscal year ended April 30, 1921, and further says that petitioner did not at any time file an income and profits tax return for the fiscal year ended April 30, 1921. Admits that

the Commissioner in determining the deficiency set forth in 60-day letter dated May 11, 1928, disallowed certain alleged adjustments to inventory and bad debts and did not recognize any value as attaching to certain patents. Denies the remaining allegations in paragraph 5. [21]

Denies generally and specifically each and every allegation in taxpayer's petition not hereinbefore expressly admitted, qualified or denied.

WHEREFORE, it is prayed that the petition be denied.

(Signed) C. M. CHAREST
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
JOHN D. FOLEY,
Special Attorney,
Bureau of Internal Revenue.

jdf/7/30/28

[Endorsed]: United States Board of Tax Appeals. Filed Aug. 7, 1928. [22]

[Title of Court and Cause.]

MOTION TO FILE AMENDED PETITION

Now comes NATIONAL PAPER PRODUCTS COMPANY, Petitioner above named, by John Francis Neylan, Esquire, its Counsel, and moves the Board for leave to file an amended petition, same being attached hereto.

JOHN FRANCIS NEYLAN
Counsel for Petitioner.
901 Crocker First National Bank Bldg.,
San Francisco, California.

[Endorsed]: United States Board of Tax Appeals. Filed Mar. 13, 1931. [23]

[Title of Court and Cause.]

AMENDED PETITION.

Now comes the above named petitioner and amends its petition heretofore filed in the above entitled matter on the 9th day of July, 1928, said amended petition being prepared and filed in accordance with a stipulation entered into by and between the petitioner and the respondent by their respective counsel, and filed with the Clerk of the Board of Tax Appeals at Washington, D. C., on the 10th day of January, 1931, a copy of which is attached hereto and made a part hereof.

Said petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner

of Internal Revenue in his notice of deficiency (IT:CR:D60-D:CAM) dated May 11, 1928, and as a basis for its proceeding alleges as follows:

1. Petitioner is a corporation organized under the laws of the State of California, and having its principal office and place of business at 534 Battery Street, San Francisco, California. [24]

2. The notice of deficiency, a copy of which is attached to the original petition filed herein, and marked Exhibit "A," and which is incorporated herein by reference thereto, was mailed to the petitioner on May 11, 1928.

3. The taxes in controversy are income and profits taxes for the fiscal year ended April 30, 1921, and the amount in controversy as per the notice of deficiency, was the sum of $31,141.52, which, however, has been altered by stipulation of counsel, a copy of which is attached hereto and made a part hereof, and is now the sum of $32,990.18.

The deficiency of $31,141.52 as set forth in the notice of deficiency is a portion of a total deficiency of $96,854.59, assessed by the Commissioner of Internal Revenue against Zellerbach Paper Company and its subsidiaries for the fiscal year ended April 30, 1921, as follows:

Zellerbach Paper Company (parent)	$64,024.37
National Paper Products Co. (subsidiary)	31,141.52
A. S. Hopkins Co. (Zellerbach Paper Company as Transferee)	1,688.70
Total deficiency	$96,854.59

The petitioner herein alleges that by reason of those certain stipulations filed in this matter, and in the matter of Zellerbach Paper Company, petitioner, versus Commissioner of Internal Revenue, respondent, Docket No. 39,701, and in the matter of Zellerbach Paper Company, Transferee of A. S. Hopkins Co., petitioner, versus, Commissioner of Internal Revenue, respondent, Docket No. 39,704, the amounts now due from the respective taxpayers are as follows: [25]

Zellerbach Paper Company	$69,114.02
National Paper Products Co.	32,990.18
Zellerbach Paper Co. as Transferee of A. S. Hopkins Co.	1,744.37

Provided, however, that the Statute of Limitations does not bar the right of the respondent herein to collect the amounts as hereinabove set forth.

The petitioner alleges therefore that the various items in controversy as set forth in the original petition filed herein have now been adjusted and agreed upon by and between the parties hereto, save and excepting the question as to whether or not the Statute of Limitations bars the right of the respondent herein to collect said additional taxes or any part of same.

4. Petitioner also alleges that the invested capital of the taxpayer for the fiscal year ended April 30, 1921, cannot be determined until it shall have been finally decided whether Zellerbach Paper Company (parent corporation) shall be compelled to pay additional taxes for the fiscal year ended April 30,

1919, in the sum of $137,519.64, and the fiscal year ended April 30, 1920, in the sum of $36,540.10, which matter is now in issue in that certain proceeding pending before the United States Board of Tax Appeals and entitled Zellerbach Paper Company, Petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 35599, it being the contention of the said Zellerbach Paper Company that the collection of said taxes for the two fiscal years hereinabove referred to, is barred by the Statute of Limitations. [26]

5. The determination of the tax set forth in the hereinabove mentioned notice of deficiency in the sum of $31,141.52, and the determination of the tax thereafter by the respondent herein, in the sum of $32,990.18, is based upon the following errors:

(a) The Commissioner erred in determining the deficiency set forth in his sixty day letter dated May 11, 1928, and in his later determination as hereinabove set forth, in respect of the taxes sought to be assessed for the fiscal year ended April 30, 1921, by reason of the fact that the assessment of any additional tax for said fiscal year was and is barred by Sections 250(d) of the Revenue Act of 1918, 250(d) (1) of the Revenue Act of 1921, Section 277(a) (1) and Section 277(a) (2) of the Revenue Act of 1924, and Section 277(a) (2), Section 277(a) (3) and Section 1106(a) of the Revenue Act of 1926, and Section 1 of the Revenue Act of 1928.

(b) The Commissioner in determining the deficiency set forth in his sixty day letter dated May 11, 1928, and in his later determination as hereinabove set forth, erred in proceeding upon the theory that inasmuch as Zellerbach Paper Company had filed its income tax return under the Revenue Act of 1918, but no additional return was filed under the Revenue Act of 1921, no Statute of Limitation applies. [27]

(c) The Commissioner in determining the deficiency set forth in his sixty day letter dated May 11, 1928, and in his later determination as hereinabove set forth, erred by ruling that an additional return was necessary under the Revenue Act of 1921, inasmuch as there were no items of income or deduction in the consolidated return filed by Zellerbach Paper Company requiring to be treated differently under the respective Revenue Acts of 1918 and 1921.

(d) The Commissioner erred in failing to include as a part of the invested capital of Zellerbach Paper Company (parent corporation) for the fiscal year ended April 30, 1921, the sum of $137,519.64, claimed by the respondent herein to be due as additional taxes for the fiscal year ended April 30, 1919; the Commissioner also erred in failing to include in the invested capital of Zellerbach Paper Company (parent corporation) for the fiscal year ended April 30, 1921, the proper pro rata portion of the sum of $36,540.10, claimed as additional taxes due from

the said Zellerbach Paper Company for the fiscal year ended April 30, 1920, and erred in failing to allow this petitioner as part of its invested capital the proper pro rata portion of the sum of $36,540.10. Petitioner alleges in connection therewith that the said Zellerbach Paper Company [28] (parent corporation) was not and is not liable for either the sum of $137,519.64, or the sum of $36,540.10, or any part of said sums for the fiscal years ended April 30, 1919, and April 30, 1920, respectively, on the ground that the claims of the Commissioner of Internal Revenue for said sums are barred by the Statute of Limitations, all as more fully set forth in that certain proceeding pending before the United States Board of Tax Appeals, being entitled Zellerbach Paper Company, petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 35599.

6. The facts upon which the petitioner relies as the basis of this proceeding, are as follows:

(a) Zellerbach Paper Company, a corporation, filed a consolidated return on its own behalf and on behalf of the petitioner herein for the fiscal year ended April 30, 1921, on July 16, 1921, as evidenced by the stipulation filed herein, a copy of which is attached hereto, which return was neither false nor fraudulent. This return was filed under the Revenue Act of 1918, which was in effect until the adoption of the Revenue Act of 1921 on November 23, 1921.

(b) Under the Revenue Act of 1918 any additional assessment was required to be made within five years after the date of the filing of the return. This is provided in Section 250(d) of the Revenue Act of 1918, and carried forward under Section 250(d)(1) of the Revenue Act of [29] 1921, Section 277(a) (2) of the Revenue Act of 1924, Section 277(a) (3) of the Revenue Act of 1926, and Section (1) of the Revenue Act of 1928. The Revenue Act of 1921 provided that any assessment of any additional taxes for the taxable year 1921, or succeeding taxable years, should be determined and assessed by the Commissioner within four years after the return was filed. This was carried forward under Section 277(a)(1) of the Revenue Act of 1924, Section 277(a)(2) of the Revenue Act of 1926, and Section 1 of the Revenue Act of 1928. The return herein, as hereinabove set forth, was filed on the 16th day of July, 1921, and under the Revenue Act of 1918 any additional assessment would necessarily have to be made on or before July 15, 1926, and under the Revenue Act of 1921 any additional assessment would have to be made on or before the 15th day of July, 1925.

(c) The paper entitled "Income and Profits Tax Waiver" dated February 27, 1925, signed by the Petitioner and Respondent, and attached to the stipulation filed herein, and marked Exhibit "A," could not, under any circumstances, extend the time for the making of any addi-

tional assessment beyond December 31, 1925. No assessment has ever been made against the petitioner herein for additional taxes for the fiscal year ended April 30, 1921, and the deficiency notice was not mailed to the petitioner until May 11, 1928.

(d) It will not be contended herein that any additional tax became due, and it is a fact that no additional tax [30] became due by reason of the adoption of the Revenue Act of 1921, by reason of any change in the basis for the computation of gross income, or the basis for deductions in arriving at net income, and no additional information that could possibly have been furnished by the taxpayer herein would have changed the method of computing the tax due, or would have changed the amount of tax due under the return as filed. The only change made by reason of the adoption of the Revenue Act of 1921 was to eliminate the $2,000.00 exemption allowed to this Petitioner under the Revenue Act of 1918 (or the proper pro rata thereof, a consolidated return having been filed by the Zellerbach Paper Company, which included the income of petitioner herein), and it therefore became the duty of the Commissioner under Section 250(b) of the Revenue Act of 1921 to examine the return and to compute the tax due thereunder. That by reason of this fact the consolidated return filed by Zellerbach Paper Company, including the income of this petitioner, on July 16, 1921, under the Revenue Act

of 1918, constituted and became a return under the Revenue Act of 1921, adopted on November 23, 1921, and which became retroactive as of January 1st, 1921; that upon the adoption of the Revenue Act of 1921 it became the duty of the Commissioner to compute the tax due from this Petitioner, or to recompute said tax, if necessary, and to advise the taxpayer in relation thereto. [31]

(e) The facts in relation to the invested capital of the petitioner for the fiscal year ended April 30, 1921, are as follows: There is now pending before the United States Board of Tax Appeals the matter of Zellerbach Paper Company, petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket Number 35599, and involving amongst other matters the question as to whether the said Zellerbach Paper Company is liable for additional taxes in the sum of $137,519.64 for the fiscal year ended April 30, 1919, and the additional sum of $36,-540.10 for the fiscal year ended April 30, 1920.

In determining the invested capital of the Zellerbach Paper Company and of the petitioner herein for the fiscal year ended April 30, 1921, the Commissioner of Internal Revenue deducted therefrom the sum of $137,519.53, representing the deficiency claimed from the Zellerbach Paper Company for the fiscal year ended April 30, 1919, and the pro rata portion of the sum of $36,540.10 representing the deficiency claimed from the Zellerbach Paper Company for the

fiscal year ended April 30, 1920, which latter was based upon the theory that the Zellerbach Paper Company and the petitioner herein would have been required to pay said deficiency claimed for the fiscal year ended April 30, 1920, in four quarterly installments as provided by the Revenue Act of 1918 in effect at that time. If it should be held that the collection of the said sum of $137,519.64 and/or the sum of $36,540.10 is barred by the Statute of Limitations, [32] (and it is the contention of the said Zellerbach Paper Company and this petitioner that the collection of both of said sums is so barred), the sum of $137,519.64, and the proper pro rata portion of the said sum of $36,540.10 should be included in the invested capital of Zellerbach Paper Company, and the proper pro rata portion thereof should be included in the invested capital of this petitioner for the fiscal year ended April 30, 1921.

7. WHEREFORE PETITIONER PRAYS that upon an answer being filed by the respondent herein a hearing may be had upon the issues involved, and that upon said hearing the Board find

(a) That the Zellerbach Paper Company filed on its behalf and on behalf of petitioner herein its income and profits tax return for the fiscal year ended April 30, 1921, on the 16th day of July, 1921, and that said return was neither false nor fraudulent. That said consolidated return contained all items of income and all deductible items, and, further, that said consolidated re-

turn contained all other information required by law to be included in its return, and that at the time of the filing of said return the taxes due on the net income of the petitioner was correctly computed.

(b) That the Revenue Act of 1921, adopted on the 23rd day of November, 1921, contained no provision making it necessary for the petitioner herein to file a new consolidated or other return, and, further, that the only change in said act consisted in eliminating the $2,000.00 exemption (or the proper pro rata of same), to which this [33] petitioner was entitled under the Revenue Act of 1918, and that it thereupon became the duty of the respondent herein, under Section 250(b) of the Act of 1921, to compute or to recompute the tax due by reason of the elimination of the exemption as hereinabove set forth, and to notify the taxpayer in relation thereto.

(c) That the return filed by the petitioner herein on July 16, 1921, and while the Revenue Act of 1918 was in force, constituted and became a valid return under the Revenue Act of 1921, and that it was unnecessary on the part of this petitioner to file a new or additional return after the adoption of the Revenue Act of 1921.

(d) That under the Revenue Act of 1918 in effect at the time the return was filed herein, the Commissioner was required to make any additional assessment of taxes claimed within

five years after the date of the filing of the return; that under the Revenue Act of 1921 it became necessary for the Commissioner to make any additional assessment within four years after the return of the petitioner herein was filed. That no additional assessment was made within the time required by either the Revenue Act of 1918 or the Revenue Act of 1921. That no proceedings were instituted for the collection of any additional taxes within the statutory period, and that the notice of deficiency was not forwarded to the petitioner herein until May 11, 1928. That the time within which any additional assessment might be made against this taxpayer was not extended beyond December [34] 31, 1925, and that by reason of these facts the right of the respondent herein to assess and/or collect any additional taxes from the petitioner herein was and is barred by the Statute of Limitations. Further, that whatever liability existed, if any, at the time of the adoption of the Revenue Act of 1926, said liability was completely extinguished by reason of the provisions of Section 1106(a) of said Revenue Act of 1926.

(e) That if it should be held that the Statute of Limitations does not bar the right of the respondent to collect additional taxes for the fiscal year ended April 30, 1921, that the invested capital of the petitioner for said fiscal year, be adjusted in accordance with the final decision as

to the collectibility of any additional taxes from the said Zellerbach Paper Company for the fiscal year ended April 30, 1919, and for the fiscal year ended April 30, 1920, which issues are involved in that certain proceeding entitled Zellerbach Paper Company, Petitioner, vs. Commissioner of Internal Revenue, Respondent, pending before the United States Board of Tax Appeals, Docket Number 35599.

(g) That such other and further relief be granted as may be meet and proper in the premises.

JOHN FRANCIS NEYLAN,
Counsel for Petitioner.
901 Crocker First National Bank Bldg.,
San Francisco, California. [35]

State of California,
City and County of San Francisco.—ss.

M. R. Higgins, being duly sworn, says that he is the Vice-President of the National Paper Products Company, and that he is duly authorized to verify the foregoing petition, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be upon information and belief, and those facts he believes to be true.

M. R. HIGGINS.

Subscribed and sworn to before me this 6th day of March, 1931.

[Seal] LULU A. GODSIL,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires September 13, 1931. [36]

[Title of Court and Cause.]

STIPULATION.

It is hereby stipulated and agreed by and between the petitioner and the respondent, by their respective attorneys of record, that the facts herein agreed to may be considered as true by the United States Board of Tax Appeals for the purpose of determining the issues involved in this appeal.

The following statement shows the petitioner's tax liability for the fiscal year ended April 30, 1921:

Correct tax	$57,919.10
Tax assessed (allocated)	24,928.92
Deficiency in tax if not barred by the statute of limitations	$32,990.18

During the fiscal year involved in this appeal the petitioner kept its books on the basis of the fiscal year ended April 30, 1921. On July 16, 1921 the petitioner filed with the Collector of Internal Revenue its return of income for the fiscal year ended April 30, 1921 under the provisions of the Revenue Act of 1918, which return disclosed a net income of the petitioner in excess of $200,000.00. After the

enactment of the Revenue Act of 1921 no other or further return for the fiscal year ended April 30, 1921 was filed by the petitioner. The return as filed by the petitioner under the [37] Revenue Act of 1918 properly showed an exemption of $2000 in computing the tax due. Under the Revenue Act of 1921 this petitioner would be entitled to no such exemption for the fiscal year ended April 30, 1921.

A paper entitled "Income and Profits Tax Waiver" dated February 27, 1925, signed by the petitioner and the respondent, is attached hereto and marked Exhibit "A."

The deficiency letter from which this appeal was taken, covering the fiscal year ended April 30, 1921, was mailed to the petitioner on May 11, 1928, and the petitioner filed its appeal from said deficiency letter with the United States Board of Tax Appeals on July 9, 1928.

The net income of the petitioner and also the total net income of the petitioner and its affiliated companies for the fiscal year ended April 30, 1921, upon which the deficiency was determined and which is now in controversy, is in excess of $300,000.00.

JOHN FRANCIS NEYLAN
Attorney for Petitioner.

C. M. CHAREST
General Counsel,
Bureau of Internal Revenue
Attorney for Respondent.

[Endorsed]: United States Board of Tax Appeals. Filed March 16, 1931. [38]

[Title of Court and Cause.]

ANSWER TO AMENDED PETITION.

The Commissioner of Internal Revenue by his attorney, General Counsel, Bureau of Internal Revenue, for answer to the amended petition filed by the above-named petitioner, admits and denies as follows:

(A). Denies all the material allegations contained in the first unnumbered paragraph of the amended petition.

(B). Admits all the material allegations contained in the second unnumbered paragraph of the amended petition.

1. Admits all the material allegations contained in paragraph numbered 1 of the amended petition.

2. Admits all the material allegations contained in paragraph numbered 2 of the amended petition.

3. Denies all the material allegations contained in paragraph numbered 3 of the amended petition, except the allegations that the taxes in controversy are income and profits taxes for the fiscal year ended April 30, 1921 and the allegation that the deficiency in tax for the fiscal year ended April 30, 1921, if not barred by the statute of limitations, is $32,990.18, which amount is the same as the amount shown in a [39] stipulation signed on behalf of the petitioner and the respondent and filed with the Board February 10, 1931.

4. Denies all the material allegations contained in paragraph numbered 4 of the amended petition.

5. Denies all the material allegations contained in paragraph numbered 5 of the amended petition.

6. Denies all the material allegations contained in paragraph numbered 6 of the amended petition.

7. Denies generally and specifically each and every allegation in the petitioner's amended petition contained not hereinbefore admitted, qualified or denied.

(signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
J. ARTHUR ADAMS,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: United States Board of Tax Appeals. Filed May 12, 1931. [40]

[Title of Court and Cause.]

STIPULATION.

It is hereby stipulated and agreed by and between the petitioner and the respondent, by their respective attorneys of record, that the facts herein agreed to may be considered as true by the United States Board of Tax Appeals for the purpose of determining the issues involved in this appeal.

The following statement shows the petitioner's tax liability for the fiscal year ended April 30, 1921:

Correct tax	$57,919.10
Tax assessed (allocated)	24,928.92
Deficiency in tax if not barred by the statute of limitations	$32,990.18

During the fiscal year involved in this appeal the petitioner kept its books on the basis of the fiscal year ended April 30, 1921. On July 16, 1921 the petitioner filed with the Collector of Internal Revenue its return of income for the fiscal year ended April 30, 1921 under the provisions of the Revenue Act of 1918, which return disclosed a net income of the petitioner in excess of $200,000.00. After the enactment of the Revenue Act of 1921 no other or further return for the fiscal year ended April 30, 1921 was filed by the petitioner. The return as filed [41] by the petitioner under the Revenue Act of 1918 properly showed an exemption of $2000 in computing the tax due. Under the Revenue Act of 1921 this petitioner would be entitled to no such exemption for the fiscal year ended April 30, 1921.

A paper entitled "Income and Profits Tax Waiver" dated February 27, 1925, signed by the petitioner and the respondent, is attached hereto and marked Exhibit "A".

The deficiency letter from which this appeal was taken, covering the fiscal year ended April 30, 1921, was mailed to the petitioner on May 11, 1928, and the petitioner filed its appeal from said deficiency letter with the United States Board of Tax Appeals on July 9, 1928.

The net income of the petitioner and also the total net income of the petitioner and its affiliated companies for the fiscal year ended April 30, 1921, upon which the deficiency was determined and which is now in controversy, is in excess of $300,000.00.

(Sgd) JOHN FRANCIS NEYLAN
Attorney for Petitioner.

(Signed) C. M. CHAREST
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

[Endorsed]: United States Board of Tax Appeals. Filed Feb. 10, 1931. [42]

EXHIBIT A

(510M)
IT:EN:T:WR

Docket No. 39715

February 27th, 1925.

INCOME AND PROFITS TAX WAIVER

(For taxable years ended prior to March 1, 1921.)
Zellerbach Paper Co. (parent)

In pursuance of the provisions of existing Internal Revenue Laws National Paper Company, a taxpayer of San Francisco, California, and the Commissioner of Internal Revenue hereby waive the time prescribed by law for making any assessment of the amount of income, excess-profits, or war-profits taxes due under any return made by or on behalf of said taxpayer for the fiscal year ended April 30, 1921 under existing revenue acts, or un-

der prior revenue acts. This waiver of the time for making any assessment as aforesaid shall remain in effect until December 31, 1925, and shall then expire except that if a notice of a deficiency in tax is sent to said taxpayer by registered mail before said date and (1) no appeal is filed therefrom with the United States Board of Tax Appeals then said date shall be extended sixty days, or (2) if an appeal is filed with said Board then said date shall be extended by the number of days between the date of mailing of said notice of deficiency and the date of final decision by said Board.

[Seal] NATIONAL PAPER PRODUCTS COMPANY
Taxpayer
By M. R. HIGGINS,
President.
D. H. BLAIR,
S. M. G.
Commissioner.

Attest:
A. D. ELLIS,
Secretary.

If this waiver is executed on behalf of a corporation, it must be signed by such officer or officers of the corporation as are empowered under the laws of the State in which the corporation is located to sign for the corporation, in addition to which, the seal, if any, of the corporation must be affixed.

C. A. S. Engineering Division.

Received Mar. 6, 1925. [43]

A true copy. Teste.

[Seal] B. D. GAMBLE

Clerk U. S. Board of Tax Appeals.

[Title of Court and Causes Nos. 39701, 39704, 39715.]

FINDINGS OF FACT AND OPINION.

Promulgated May 17, 1932.

The only return filed for the fiscal year ended April 30, 1921 was one filed July 16, 1921. A credit of $2,000 was taken in this return as allowed by the Revenue Act of 1918. Thereafter the Revenue Act of 1921 was approved under which the taxpayer owed additional tax since it was not entitled to the full credit of $2,000. Held, that the return filed did not start the statutory period of limitations.

John Francis Neylan, Esq., for the petitioners.

H. A. Cox, Esq., and F. R. Shearer, Esq., for the respondent.

The Commissioner determined a deficiency in the income tax liability of Zellerbach Paper Company for the fiscal year ended April 30, 1921. He also determined a deficiency in the liability of National Paper Products Company for the same period. He determined, further, that Zellerbach Paper Company was liable as transferee of the A. S. Hopkins Company for a deficiency in that company's tax liability for the period November 1, 1920, to April 30, 1921. The parties have stipulated the correct amount of the deficiency in each case, and the only question in controversy is whether or not the deficiencies are barred by the statute of limitations. [44]

FINDINGS OF FACT.

The parties entered into the following stipulations:

Docket No. 39701 Zellerbach Paper Company

The following statement shows the petitioner's tax liability for the fiscal year ended April 30, 1921:

Correct tax	$127,303.66
Tax assessed (allocated)	58,189.64
Deficiency in tax if not barred by the statute of limitations	$ 69,114.02

During the fiscal year involved in this appeal the petitioner kept its books on the basis of the fiscal year ended April 30, 1921. On July 16, 1921 the petitioner filed with the Collector of Internal Revenue its return of income for the fiscal year ended April 30, 1921 under the provisions of the Revenue Act of 1918, which return disclosed a net income of the petitioner in excess of $500,000. After the enactment of the Revenue Act of 1921 no other or further return for the fiscal year ended April 30, 1921 was filed by the petitioner. The return as filed by the petitioner under the Revenue Act of 1918 properly showed an exemption of $2000 in computing the tax due. Under the Revenue Act of 1921 this petitioner would be entitled to no such exemption for the fiscal year ended April 30, 1921.

A paper entitled "Income and Profits Tax Waiver" dated February 27, 1925, signed by the petitioner and the respondent, is attached hereto and marked Exhibit "A".

The deficiency letter from which this appeal was taken, covering the fiscal year ended April 30, 1921, was mailed to the petitioner on May 11, 1928, and the petitioner filed its appeal from said deficiency letter with the United States Board of Tax Appeals on July 9, 1928.

The net income of the petitioner and also the total net income of the petitioner and its affiliated companies for the fiscal year ended April 30, 1921, upon which the deficiency was determined and which is now in controversy, is in excess of $500,000.00.

Docket No. 39715 National Paper Products Co.

The following statement shows the petitioner's tax liability for the fiscal year ended April 30, 1921:

Correct tax	$57,919.10
Tax assessed (allocated)	24,928.92
Deficiency in tax if not barred by the statute of limitations	$32,990.18

[45]

During the fiscal year involved in this appeal the petitioner kept its books on the basis of the fiscal year ended April 30, 1921. On July 16, 1921 the petitioner filed with the Collector of Internal Revenue its return of income for the fiscal year ended April 30, 1921 under the provisions of the Revenue Act of 1918, which return disclosed a net income of the petitioner in excess of $200,000. After the enactment of the Revenue Act of 1921 no other or further return for the fiscal year ended April 30,

1921 was filed by the petitioner. The return as filed by the petitioner under the Revenue Act of 1918 properly showed an exemption of $2000 in computing the tax due. Under the Revenue Act of 1921 this petitioner would be entitled to no such exemption for the fiscal year ended April 30, 1921.

A paper entitled "Income and Profits Tax Waiver" dated February 27, 1925, signed by the petitioner and the respondent, is attached hereto and marked Exhibit "A".

The deficiency letter from which this appeal was taken, covering the fiscal year ended April 30, 1921, was mailed to the petitioner on May 11, 1928, and the petitioner filed its appeal from said deficiency letter with the United States Board of Tax Appeals on July 9, 1928.

The net income of the petitioner and also the total net income of the petitioner and its affiliated companies for the fiscal year ended April 30, 1921, upon which the deficiency was determined and which is now in controversy, is in excess of $300,000.00

[The two exhibits A mentioned in the above stipulations each waive the time for making assessment of taxes due for the fiscal year ended April 30, 1921 until December 31, 1925.]

Docket No. 39704 Zellerbach Paper Company, Transferee of A. S. Hopkins Co.

The liability for federal income and profits taxes for the period from November 1, 1920 to April 30, 1921, of A. S. Hopkins Company, dissolved, is as shown below:

Correct tax	$1,744.37
Tax assessed	none
Deficiency in tax if not barred by the statute of limitations	$1,744.37

together with statutory interest thereon to the date of payment. [46]

It is further stipulated and agreed that the aforesaid deficiency in tax and interest for the period ended April 30, 1921, is now due from this petitioner as transferee under Section 280 of the Revenue Act of 1926 of the assets of said A. S. Hopkins Company, unless the collection of said tax is now barred by the statute of limitations. Should the Board find that the collection of the said tax is not barred by the statute of limitations the Board may enter an order finding that in law and in equity there is a deficiency in federal income and profits taxes for the period ended April 30, 1921 in the amount of $1,744.37, together with statutory interest thereon to date of payment, due from the petitioner as transferee under Section 280 of the Revenue Act of 1926 of the assets of said A. S. Hopkins Company, a dissolved corporation.

A. S. Hopkins Company was affiliated with the Zellerbach Paper Company, the National Paper Products Company and the Sanitary Products Corporation during the period from November 1, 1920 to April 30, 1921, under the provisions of Section 240 of the Revenue Acts of 1918 and 1921. The Zellerbach Paper Company (parent), the National

Paper Products Company and the Sanitary Products Corporation (subsidiaries) kept their books on the basis of the fiscal year ended April 30, 1921 and filed their return on the basis of the fiscal year ended April 30, 1921. On March 15, 1921, Zellerbach Paper Company designated itself, Zellerbach Paper Company, successors to A. S. Hopkins Company, filed a return in the name of A. S. Hopkins Company for the calendar year 1920 and included in said return the income of said A. S. Hopkins Company for the months of November and December, 1920. The income of A. S. Hopkins Company earned subsequent to December 31, 1920, was included as part of the income of Zellerbach Paper Company in the return filed July 16, 1921, by the Zellerbach Paper Company (parent), the National Paper Products Company and the Sanitary Products Corporation (subsidiaries) under the provisions of the Revenue Act of 1918 covering the fiscal year ended April 30, 1921, which return disclosed a net income in excess of $700,000.00. After the enactment of the Revenue Act of 1921 no other or further return for the fiscal year ended April 30, 1921, was filed by the Zellerbach Paper Company (parent), the National Paper Products Company, the Sanitary Products Corporation or the A. S. Hopkins Company (subsidiaries). No returns other than those referred to in this stipulation covering the fiscal year ended April 30, 1921 or any portion thereof, have been fied by the Zellerbach Paper Company (parent), the National Paper Products Company, the Sanitary Products Cor-

poration and A. S. Hopkins Company (subsidiaries. [47]

The said return filed by the Zellerbach Paper Company (parent), the National Paper Products Company and the Sanitary Products Corporation (subsidiaries) (in which was included the income of the A. S. Hopkins Company earned subsequent to December 31, 1920 to April 30, 1921) properly showed an exemption of $2000 in computing the tax due. Under the Revenue Act of 1921 the said affiliated companies would be entitled to no such exemption for the fiscal year ended April 30, 1921.

The deficiency letter from which this appeal was taken, covering the period from November 1, 1920 to April 30, 1921, was mailed to the petitioner on May 11, 1928 and the petitioner filed its appeal from said deficiency letter with the United States Board of Tax Appeals on July 9, 1928.

The net income of the said affiliated companies referred to herein for the fiscal year ended April 30, 1921, upon which the deficiency was determined and which is now in controversy is in excess of $1,000,000.

The A. S. Hopkins Company maintained its own set of books and records until December 31, 1920. Thereafter, it maintained no separate set of books, and its operations were mingled with those of Zellerbach Paper Company as if it were a branch of the latter company.

On the return for the A. S. Hopkins Company for the calendar year 1920, at page 3, the following question and answer appears:

12. Is over 50 per cent of your outstanding voting capital stock owned by another corporation or by two or more corporations that are affiliated?

The entire capital stock of this Corporation has been bought by the Zellerbach Paper Co. and its entire net assets transferred as of December 31, 1920.

Since the answer to question 12 was in the affirmative, question 14 should have been answered. A proper answer to this question would have shown how the situation changed during the year. This information was not furnished. In the affidavit on this return it was stated to be a return made pursuant to the Revenue Act of 1918. [48]

On the return for the fiscal year ended April 30, 1921 there is no answer to the question "Is this a consolidated return", but the names of the following companies appear at the head of the return: Zellerbach Paper Company, National Paper Products Company, Sanitary Products Corporation. Questions 11, 12, and 13 were not answered. In question 14, pertaining to affiliations with other corporations, the following question was answered "Yes":

Did substantially the same conditions as are set out in the questionnaire filed for 1919 or prior years, obtain during the entire taxable period 1920?

In the schedules attached to this return, information and figures pertaining to each of the three separate companies above named were set out but no

separate information or figures appear in the return pertaining to the A. S. Hopkins Company. This return did not in any way indicate that the A. S. Hopkins Company was one of the affiliated companies for which the return was made nor in any way inform the Commissioner that its income was included in the return. The statement appears in the affidavit supporting this return that it is a return made pursuant to the Revenue Act of 1918.

OPINION.

MURDOCK: The Board has consistently held in situations like the one here present, that a return filed pursuant to the Revenue Act of 1918 is not sufficient to start the period of limitation. The first case of this kind was C. A. Lawton Company, 13 B. T. A. 8, where the Board cited John Wanamaker, Philadelphia, 8 B. T. A. 864, in which a somewhat similar question had been discussed. The other decisions are Hutchinson Company, 14 B. T. A. 367; Valentine-Clark Company, 14 B. T. A. 562 [reversed 52 Fed. (2d) 346]; Gus Holstine Dry Goods Company, 16 B. T. A. [49] 1124; Isaac Goldmann Company, 17 B. T. A. 1103 [reversed 51 Fed. (2d) 427]; Myles Salt Company, Ltd., 18 B. T. A. 742; [reversed 49 Fed. (2d) 232]; Adams, Cushing & Foster, Inc., 19 B. T. A. 89; G. Corrado Coal and Coke Interests, Inc., 19 B. T. A. 691; and E. J. Lorie, et al., 21 B. T. A. 612. Cf. Hill Goldwater, 21 B. T. A. 73, and particularly National Paper Products Company, et al., 26 B. T. A. ..... The Board's

reasons for its position are fully set forth in the above opinions and need not be repeated here. Those decisions are supported by Updike v. United States, 8 Fed. (2d) 913. With all due respect to the Courts of Appeal which have reversed the Board, we adhere to our original position because we still feel that it is the correct one.

The Commissioner would support his determination in these cases on another ground. The A. S. Hopkins Company was affiliated with the other companies from November 1, 1920 until the end of the fiscal period April 30, 1921. The Commissioner contends that its income was never properly reported for this period since its income for November and December, 1920, was reported in a separate return, and its income from January 1, 1921 to April 30, 1921, was included in that of Zellerbach Paper Company without even disclosing that it was so included and without setting forth separately its income and deductions from those of the Zellerbach Paper Company. He cites Commissioner v. Colmer-Green Lumber Company, 49 Fed. (2d) 234 in support of his contention that the statute has not barred him from proceeding further against the Zellerbach Paper Company as a taxpayer and also as a transferee of the assets of A. S. Hopkins Company. The case cited may not be distinguishable from the present case in this connection, but the Board has consistently held that no such segregation in the return is necessary to start the running of the period of limitations. Its [50] first decision to this effect has been affirmed

by the Circuit Court of Appeals for the Third Circuit. Stetson & Ellison, 11 B. T. A. 397, affirmed 43 Fed. (2d) 553. See also Peerless Iron Pipe Exchange, Inc., 23 B. T. A. 900.

Reviewed by the Board.

Judgment will be entered under Rule 50.

VAN FOSSAN, dissenting: I am unable to agree with the prevailing opinion in these cases. The conclusions of the Board have been tested by appeal to the courts on three occasions and in each case the Board has been reversed. Valentine-Clark Co., 14 B. T. A. 562; reversed, 52 Fed. (2d) 346; Isaac Goldmann Co., 17 B. T. A. 1103; reversed, 51 Fed. (2d) 427; Myles Salt Co., 18 B. T. A. 742; reversed, 49 Fed. (2d) 232. I believe the position taken by the Board in these and like cases has been erroneous and that in the instant case the petitioners should prevail.

MARQUETTE agrees with this dissent. [51]

[Title of Court and Cause.]

MOTION.

Comes now the respondent by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, in pursuance to the Board's interlocutory decision dated May 17, 1932, and moves that the Board find the deficiencies in respect to the above-named petitioners in the following amounts:

Docket No.	Name	Amount	Year
39701	Zellerbach Paper Co.	$69,114.02	Fiscal Year April 30, 1921
39704	Zellerbach Paper Co. Transferee of A. S. Hopkins Co.	$ 1,744.37	Period Nov. 1, 1920 to April 30, 1921.
39715	National Paper Products Company	$32,990.18	Fiscal Year April 30, 1921

inasmuch as the Board's decision does not alter the deficiencies as agreed upon in the stipulation of facts heretofore filed in these proceedings.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
HENRY A. COX,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: United States Board of Tax Appeals.
Filed May 31, 1932. [52]

[Title of Court and Cause.]

NOTICE UNDER RULE 50.

June 3, 1932.

TAKE NOTICE that the Respondent in the above-entitled proceeding filed with the Board on May 31, 1932, a computation and notice, a copy of which is inclosed. This proceeding will be called for hearing upon such computation at 9.30 a. m. on June 29, 1932, before a Division of the Board at its Washington Office, Constitution Avenue at 12th Street, Northwest, unless, prior to that date, your written acquiescence to the entry of a decision based on such computation shall have been filed with the Board.

No further notice of said hearing will be sent.

B. D. GAMBLE,
Clerk.

To: John Francis Neylan, Esq.,
Crocker First National Bank Bldg.,
San Francisco, California. [53]

United States Board of Tax Appeals

Docket No. 39715

NATIONAL PAPER PRODUCTS COMPANY,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION.

Pursuant to the Board's findings of fact and opinion promulgated May 17, 1932, the respondent, on May 31, 1932 having filed a motion to find the deficiency in the amount agreed upon in the stipulation of facts, and no objection to said motion having been made by the petitioner, after due notice thereof, it is

ORDERED and DECIDED that there is a deficiency for the fiscal year ended April 30, 1921 in the amount of $32,990.18.

[Seal] (Signed) LOGAN MORRIS,
Member,
United States Board of Tax Appeals.

[Endorsed]: Entered Jul. 13, 1932. [54]

[Title of Court and Cause.]

PETITION FOR THE REVIEW OF DECISION OF THE UNITED STATES BOARD OF TAX APPEALS.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes National Paper Products Company, by its attorneys, Messrs. John Francis Neylan and J. Paul Miller, and respectfully shows:

I.

Jurisdiction for Review.

This is a proceeding for review by the United States Circuit Court of Appeals for the Ninth Circuit of a decision rendered in the above entitled matter by the United States Board of Tax Appeals, entered on the 13th day of July, 1932, redetermining a deficiency in income and profits taxes for the fiscal year ending April 30, 1921, against the above Petitioner, in the sum of $32,990.18. [55]

This Petition for Review is filed in pursuance of the provisions of Section 1001 of the Act of Congress approved on the 26th day of February, 1926, as amended by the Revenue Act of 1928 and the Revenue Act of 1932.

II.

Your Petitioner is a corporation organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business in the City and County of San Francisco, State of California.

For the fiscal year ending April 30, 1921, Zellerbach Paper Company, of which your petitioner was and is a subsidiary, filed a consolidated income and profits tax return on behalf of the said Zellerbach Paper Company, the Sanitary Products Corporation, and your Petitioner, on the 16th day of July, 1921, with the Collector of Internal Revenue for the First District of California, whose office was and is located in the City and County of San Francisco, State of California.

III.

Nature of Controversy.

The nature of the controversy is as follows:

On July 16, 1921 Zellerbach Paper Company, of which your Petitioner was and is a subsidiary, filed a consolidated income and profits tax return on behalf of the said [56] Zellerbach Paper Company, the Sanitary Products Corporation, and your Petitioner, with the Collector of Internal Revenue for the First District of California, at San Francisco, California, for the fiscal year ended April 30th, 1921.

This return was filed during the time the Act commonly known as the Revenue Act of 1918 was in effect.

Under the provisions of the Revenue Act of 1918 in effect at the time the income and profits tax return hereinabove referred to was filed, a corporate taxpayer was allowed an exemption of $2,000.00.

Under the Revenue Act of 1921, which went into effect on November 23, 1921, this exemption was

eliminated if the net income of the corporation was in excess of $25,000.00. The income of Zellerbach Paper Company and its subsidiaries for the fiscal year in question was admittedly in excess of $25,000.00 and as a consequence under the 1921 Act, the Zellerbach Paper Company was not entitled to the exemption of $2,000.00.

The Revenue Act of 1921, which became effective on November 23, 1921, was retroactive as of January 1, 1921 as to certain features thereof. Amongst the retroactive provisions of the Act was the elimination of the $2,000. exemption.

The fiscal year involved herein began May 1, 1920 and ended April 30, 1921. As a result thereof, eight [57] months of the fiscal year fell in the calendar year 1920 and four months fell in the calendar year 1921. The elimination of the $2,000. exemption as hereinabove set forth had the effect of reducing the exemption which the Zellerbach Paper Company and its subsidiaries, whose income was reported therein, was entitled to take in the filing of its return, to the sum of $1,333.34. The tax was increased thereby in the sum of $66.67.

No additional return was filed by or on behalf of the National Paper Products Company (or the Zellerbach Paper Company) for the fiscal year ending April 30, 1921, other than the return hereinabove mentioned.

The statutory period within which the Commissioner of Internal Revenue might make an additional assessment under the Act of 1918 was five

years. This period was reduced, under the Revenue Act of 1921, to four years.

Under date of February 27, 1925, the National Paper Products Company executed an "Income and Profits Tax Waiver" extending the time within which the Commissioner of Internal Revenue might make an additional assessment to December 31, 1925. No other waiver was executed.

A deficiency letter, i. e., the so-called Sixty Day Letter, was issued to your Petitioner herein by the Commissioner of Internal Revenue under date of May 11, 1928, [58] attached to which was a "Statement of Resulting Tax Liability" wherein reference was made to an additional sixty day letter addressed to Zellerbach Paper Company, the parent of the National Paper Products Company.

An appeal from this sixty day letter was taken to the United States Board of Tax Appeals on the 9th day of July, 1928.

Thereafter, the Commissioner of Internal Revenue filed his Answer to said Petition.

Under date of February 10, 1931, the attorneys for the respective parties filed with the United States Board of Tax Appeals a stipulation wherein it was agreed that the deficiency in tax, if not barred by the Statute of Limitations, amounted to $32,990.18.

On or about the 16th day of March, 1931, the taxpayer, National Paper Products Company, filed with the United States Board of Tax Appeals an amended petition, whereupon the Commissioner of Internal Revenue filed his answer to same.

In the answer to the amended petition filed by the Commissioner herein, it was admitted by the Commissioner that the deficiency in tax for the fiscal year ended April 30, 1921, was $32,990.18 "if not barred by the Statute of Limitations." [59]

As hereinabove recited, the income of Petitioner herein, to-wit, National Paper Products Company, was reported in a consolidated income and profits tax return filed by Zellerbach Paper Company. Separate sixty day letters were forwarded by the Commissioner of Internal Revenue to Zellerbach Paper Company and National Paper Products Company which resulted in separate appeals to the United States Board of Tax Appeals. In connection with the appeal taken by Zellerbach Paper Company, Board of Tax Appeals Docket Number 39701, a similar amended petition was filed before the Board of Tax Appeals, to which an answer was filed by the Commissioner of Internal Revenue, wherein it was admitted "that the only issue before the Board for decision is whether the deficiency is barred by the Statute of Limitations."

For the purpose of trial before the United States Board of Tax Appeals, the above-captioned case was consolidated with two additional cases, to-wit, Zellerbach Paper Company, Petitioner, v. Commissioner of Internal Revenue, Respondent, Board of Tax Appeals Docket Number 39701, and Zellerbach Paper Company, as Transferee of A. S. Hopkins Company, Petitioner, v. Commissioner of Internal Revenue, Respondent, Board of Tax Appeals Docket

Number 39704. A joint opinion was rendered by the United States Board of Tax Appeals, and reported in 26 B. T. A. 96. Separate Petitions for Review are being filed, however, in connection with each of these three cases. [60]

The Board of Tax Appeals in its opinion rendered in these cases, recognizes that the identical question has been determined against the Commissioner in three cases, to-wit: Myles Salt Company v. Commissioner (C. C. A. 5th) 49 Fed. (2) 232; Isaac Goldman Company v. David Burnet (Court of Appeals of District of Columbia) 51 Fed. (2) 427, and Valentine-Clark Company v. Commissioner (C. C. A. 8th) 52 Fed. (2) 346. Despite this fact, the Board of Tax Appeals refuses to follow the rulings of the courts.

Board of Tax Appeals Member Van Fossan dissented from the majority of the Board, holding that the cases decided by the courts above cited are controlling. Board of Tax Appeals Member Marquette agreed with this dissent.

IV.

Assignments of Error.

The Petitioner states that in the record and proceedings before the Board of Tax Appeals, and in the decision and the final order of redetermination rendered and entered by the Board of Tax Appeals, manifest error occurred which intervened to the prejudice of the Petitioner and the Petitioner assigns the following errors, and each of them, which,

it avers, occurred in said record, proceedings, decision and final order of redetermination, and upon which it relies to reverse said decision and final order of redetermination so rendered and returned by the Board of Tax Appeals, to-wit: [61]

(a) The Board of Tax Appeals erred in holding that the collection of the deficiency in question was not barred by the Statute of Limitations;

(b) The Board of Tax Appeals erred in holding that the income and profits tax return for the fiscal year ended April 30, 1921, filed by Zellerbach Paper Company, parent corporation of Petitioner herein, and which constituted the return of this Petitioner, on the 16th day of July, 1921, under the provisions of the Revenue Act of 1918, did not start the running of the period of limitation.

(c) The Board of Tax Appeals erred in failing to hold that the return filed on the 16th day of July, 1921, and hereinabove referred to, did not become a return under the Revenue Act of 1921, upon the adoption of that Act on November 23, 1921.

(d) The Board of Tax Appeals erred in holding that the Revenue Act of 1921 required the filing of a new income and profits tax return, which would differ from that filed under the Revenue Act of 1918, only by the elimination of a portion of the $2,000 corporate exemption.

(e) The Board of Tax Appeals erred in finding a deficiency against the Petitioner for the fiscal year ending April 30, 1921, in the sum of $32,990.18.

(f) The Board of Tax Appeals erred in rendering a decision for the Respondent. [62]

WHEREFORE, your Petitioner prays:

(1) That this Honorable Court review the decision of the United States Board of Tax Appeals.

(2) That the transcript of the record be prepared in accordance with the law and with the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and transmitted to the Clerk of said court for filing.

(3) That appropriate action be taken by this Honorable Court to the end that the errors complained of may be reviewed and corrected.

(4) For such other and further relief as to this Honorable Court may seem fit and proper.

NATIONAL PAPER PRODUCTS COMPANY,

By THOMAS McLAREN.

JOHN FRANCIS NEYLAN,

J. PAUL MILLER,

Attorneys for Petitioner,

1 Montgomery Street,

San Francisco, California. [63]

State of California,
City and County of San Francisco.—ss.

Thomas McLaren, being first duly sworn, deposes and says:

That he is the Vice-President of National Paper Products Company, the Petitioner in the above entitled matter; and that as such he had authority to, and did sign the above and foregoing petition; that he has read the same and knows the contents thereof; that the same is true of his own knowledge, except those matters which are therein alleged on information or belief, and that as to those matters he believes it to be true; that the said petition is filed in good faith, and not for the purpose of delay.

THOMAS McLAREN.

Subscribed and sworn to before me this 1st day of October, 1932.

[Seal] LULU A. GODSIL,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires September 13, 1935.

[Endorsed]: United States Board of Tax Appeals. Filed Oct. 4, 1932. [64]

[Title of Court and Cause.]

NOTICE OF FILING OF PETITION FOR REVIEW.

To: C. M. Charest, Esq.,
General Counsel,
Bureau of Internal Revenue,
Washington, D. C.
Attorney for Respondent.

PLEASE TAKE NOTICE that the above named Petitioner did, on the 4th day of October, 1932, file with the United States Board of Tax Appeals a Petition for Review of the decision of said Board in the above entitled cause by the United States Circuit Court of Appeals for the Ninth Circuit, a copy of which said Petition for Review is herewith served upon you.

(Signed) JOHN FRANCIS NEYLAN,
(Signed) J. PAUL MILLER,
Attorneys for Petitioner,
1 Montgomery Street,
San Francisco, California.

Service of the foregoing Notice and service of a copy of the Petition for Review mentioned in said Notice, is hereby accepted this 4th day of October, 1932.

(Signed) C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondent.

[Endorsed]: United States Board of Tax Appeals. Filed Oct. 4, 1932 [65]

[Title of Court and Cause.]

STATEMENT OF EVIDENCE

The above-entitled cause came on for hearing before The Honorable E. H. Van Fossan, Member of the United States Board of Tax Appeals, on the 10th day of June, 1931, at Oakland, California, there being present the Petitioner, by its Counsel, Messrs. John Francis Neylan and J. Paul Miller, and the Respondent, by its Counsel, Messrs. H. A. Cox and F. R. Shearer (C. M. Charest, Esq., General Counsel).

Thereupon the following proceedings were had and testimony heard by said Member pertaining to the issues involved in the petition for Review filed with the United States Board of Tax Appeals on the 9th day of July, 1928.

Prior to the introduction of testimony, Counsel for petitioner moved for the consolidation of the above-entitled case for the purpose of the hearing with the two additional cases, to-wit, Zellerbach Paper Company, Petitioner, v. Commissioner of Internal Revenue, Respondent, United States Board of Tax Appeals Docket No. 39701, and Zellerbach Paper Company, as Transferee of A. S. Hopkins Company, Petitioner, v. Commissioner of Internal Revenue, Respondent, United States Board of Tax Appeals No. 39704, which motion was granted. [66]

Thereupon attention was called to the desirability of correcting a certain stipulation which had theretofore been filed in case Docket No. 39704 hereinabove referred to, whereupon the following proceedings took place:—

"Mr. Neylan: Mr. Cox has the language which has been agreed upon.

"Mr. Cox: At the middle of page 2 of that stipulation, the following language or the following sentence is to be stricken out:

'A. S. Hopkins Company filed its return on March 15, 1921, for the calendar year 1920, and included in said return its income for the months of November and December, 1920.'

In lieu of that sentence there is to be substituted the following sentence:

'On March 15, 1921, Zellerbach Paper Company, designated itself, Zellerbach Paper Company, successors to A. S. Hopkins Company, filed a return in the name of A. S. Hopkins Company for the calendar year 1920 and included in said return the income of said A. S. Hopkins Company for the months of November and December, 1920.'

Then in the next sentence on the same page an insertion is to be made whereby that sentence, as corrected, will read:

'The income of A. S. Hopkins Company earned subsequent to December 31, 1920, was included as part of the income of Zellerbach Paper Company in the return filed July 16, 1921, by the Zellerbach Paper Company (parent).'

And then continue with the rest of the sentence just as it now stands in the stipulation without

further change, the only change being that after the word 'included' in that sentence there is to be inserted the words 'as part of the income of Zellerbach Paper Company'.

"The Member: That is in Docket number 39704.

"Mr. Cox: Yes." [67]

Thereupon Petitioner's Counsel offered in evidence the original Income and Profits Tax Return of the Zellerbach Paper Company, the National Paper Products Company, and the Sanitary Products Corporation for the period May 1st, 1920 to the period ended April 30, 1921. In connection with the offer, the following colloquy occurred:

"Mr. Neylan: Now, in relation to the original return in this matter, I assume it is necessary to introduce that in evidence?

"The Member: We have it before us.

"Mr. Neylan: May I ask counsel for the Government if he will agree, without formal proof, that this return which has been handed to me by counsel for the Government is the original return of the Zellerbach Paper Company, the National Paper Products Company, the Sanitary Products Corporation for the period May 1st, 1920, to the period ended April 1st, 1921, and may this be introduced without objection?

"Mr. Cox: May we ask if the signers of the return were officers of all the companies you have named?

"Mr. Neylan: I will have to verify that, Mr. Cox. Mr. Zellerbach, I may say positively, was certainly an officer of the Zellerbach Paper Company, and of National Paper Products.

"The Member: Was he also an officer of Sanitary Products Corporation?

"Mr. Neylan: This is a consolidated return, your Honor.

"Mr. Cox: We agree that this is the original return for whatever it purports to be.

"Mr. Neylan: That is all I want."

The document was received in evidence and marked "Petitioner's Exhibit No. 1." Thereupon Mr. Neylan, counsel for Petitioner, stated: "This is the only return in relation to this matter that this corporation or these corporations ever filed." [68]

Thereupon the following proceedings took place:—

"Mr. Neylan: Your Honor, I would like to ask at this time if the sixty-day letters in each of these matters which are appended to the petition are considered in evidence and as a part of the record, or is it necessary to introduce them in evidence?

"Mr. Cox: We admitted them to be correct in our answer, did we not?

"Mr. Neylan: I think you did.

* * * * * * *

"Mr. Neylan: As I understand, Government counsel at this time agrees that they may be considered in evidence as the correct sixty-day letters, is that correct, Mr. Cox?

"Mr. Cox: Yes, assuming we admitted them.

"Mr. Neylan: Well, subject to that.

"The Member: If you did not admit them, are you now admitting them?

"Mr. Cox: If your Honor will give me a minute I will see whether we did or not. There was a question as to one of them.

"Mr. Neylan: That was in relation to 1925, Mr. Cox?

"Mr. Cox: Yes, they are all three admitted in the answer.

"The Member: Very well."

Thereupon Counsel for Petitioner made his opening statement, and offered some evidence which was received by the Board, after which Counsel for the Respondent offered in evidence the income and profits tax return of the A. S. Hopkins Company which had been filed by Zellerbach Paper Company as successor to A. S. Hopkins Company, and is the return referred to in the Stipulation entered into between the parties in Docket No. 39704, which return was received in evidence [69] and marked "Respondent's Exhibit A."

Thereupon the following proceedings took place:—

"Mr. Cox: The position of the respondent in this case is that an additional return was necessary under the law and under the regulations of Commissioner which were authorized by law; and it is also our position that the return filed did not segregate the income of all the companies; in other words, the income of the Hop-

kins Company was not segregated from the income of the Zellerbach Company, but they were both included as the income of the Zellerbach Company, and the Board in several cases, as I understand, has sustained the position of the Commissioner on this case.

"The Member: How does this case differ from the Myles Salt case?

"Mr. Cox: This differs from the Myles Salt case in the matter that I have just pointed out, and there are probably other matters. We wish, for the purpose of the brief, to analyze the return, and call your Honor's attention to such things as we think mark the distinction between the two cases; but there is that one distinction which I have in mind, that the income of the two companies was not segregated, and under the decision of the Circuit Court of Appeals, for the Fifth Circuit, in Robert H. Lucas, Commissioner, v. Colmer Green Lumber Company, decided April 30, 1931, that was made the basis, as I understand it, of that decision.

"The Member: In that case, as I recall, they held there was not a substantial revelation of the facts necessary to determine the income of each of the corporations.

"Mr. Cox: Yes, of each separate company.

"The Member: And, it therefore, did not comply with their understanding of the statute. It was the same circuit that had the Myles Salt case, was it not?

"Mr. Cox: That was the same Circuit, yes.

"The Member: Is there anything else you wish to submit?

"Mr. Cox: Nothing your Honor." [70]

Thereupon the Petitioner introduced the following testimony in rebuttal:

TESTIMONY OF ALONZO WALLACE HELVERN

Alonzo Wallace Helvern being first duly sworn, on direct examination in substance testified as follows:

My name is Alonzo Wallace Helvern; I reside in San Francisco; my profession is that of a public accountant and tax advisor. I have been a public accountant for ten years; I am now and for a number of years past have been familiar with tax matters; I have been associated with the accounting firm of Lybrand, Ross Bros. & Montgomery for a period of ten years; I am the manager of the Tax Department of this firm at the present time and have been since January 1, 1928. I have had occasion to examine the original books and records of account of the Zellerbach Paper Company, National Paper Products Company, and the A. S. Hopkins Company, and I am familiar with the income tax returns of these companies. I heard the point made by Counsel for the Government, Mr. Cox, in connection with the segregation of the income of the A. S. Hopkins Company. I am familiar with the facts in relation to the income of the A. S. Hopkins Company and with the accounting records of Zellerbach

(Testimony of Alonzo Wallace Helvern.)

Paper Company in relation thereto. My information in relation thereto was gathered in the following manner:

Prior to 1925 I was engaged in auditing rather than income tax work, although income tax work was a part of my duties. I was at that time employed by Lybrand, Ross Bros. & Montgomery and had been engaged by them since January, 1921. Part of my work was the auditing of the accounts of Zellerbach Paper Company. [71] In the ordinary course of my duties as an accountant and as an employee of Lybrand, Ross Bros. & Montgomery I came in contact with the accounts of Zellerbach Paper Company; I was engaged as a senior auditor in the auditing of those accounts.

In relation to the income of A. S. Hopkins Company, beginning with October, 1920, I found that all of the capital stock of the A. S. Hopkins Company, or approximately all of that capital stock was acquired by Zellerbach Paper Company during the month of October, 1920. I found that Zellerbach Paper Company continued the A. S. Hopkins Company as a subsidiary maintaining its own set of books and records until December 31, 1920. Thereafter, the A. S. Hopkins Company fully controlled by Zellerbach Paper Company, was continued up to the time of its dissolution as a mere branch of Zellerbach Paper Company and had no separate set of books, its operations being mingled and operated entirely by Zellerbach Paper Company as its own branch. It had no set of books after January 1,

(Testimony of Alonzo Wallace Helvern.)

1921. There was no segregation of the income or of the expense of the conducting of the A. S. Hopkins Company; such segregation would have been very impractical, and probably impossible. It was merely a part of Zellerbach Paper Company for accounting purposes.

Thereupon the witness was cross-examined by Government Counsel as follows:

"By Mr. Shearer:

"Q. Now, in regard to the income of the Hopkins Company beginning January 1, 1921, up to the end of the fiscal year that is involved in this case, it is true, is it not, that the Commissioner did determine a substantial income between those periods, January 1, 1921, [72] and the end of this fiscal year, for the Hopkins Company?

"A. If the Commissioner did make such determination, it was not known to me from my subsequent examination of the Revenue Agent's reports and records. There is no indication that any segregation was made by the Commissioner, from any knowledge I have after January 1st.

"Mr. Neylan: Here is one letter, November 1, 1920 to April 30th, 1921—is that what you are looking for?

"Mr. Shearer: Yes.

"Mr. Neylan: That includes the months of November and December, 1920, when it had a separate set of books. You will find that in the

(Testimony of Alonzo Wallace Helvern.)

deficiency letter. I might say to counsel for the Government that the original thirty-day letter of the Commissioner, dated the 27th day of December, 1927, made no segregation to the Hopkins Company.

"Mr. Shearer: Counsel for Petitioner is correct in his statement. I was laboring under a misapprehension. The income set up in the deficiency letter of May 11, 1928, a copy of which is attached to the original petition in Docket No. 39701 shows that the income for the period ended April 30th, as a matter of fact, was two months' income for November and December, 1920.

"No further cross-examination."

The foregoing is the substance of the evidence adduced at the trial of this proceeding pertaining to the issues involved in this appeal.

JOHN FRANCIS NEYLAN.
WCM.

J. PAUL MILLER.
WCM. [73]

I have no objection to the foregoing statement of the evidence.

C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue,
Counsel for Respondent.

Settled and approved this 23rd day of May, 1933.

(Sgd) J. E. MURDOCK,
Member, U. S. Board of Tax Appeals.

[Endorsed]: United States Board of Tax Appeals. Lodged May 19, 1933.

[Endorsed]: United States Board of Tax Appeals. Filed May 23, 1933. [74]

[Title of Court and Cause.]

PRAECIPE FOR RECORD.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare and, within sixty days from the date of the filing of the Petition for Review in the above stated case, transmit to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit certified copies of the following documents:

1. The docket entries of all proceedings before the Board of Tax Appeals in the above entitled cause;

2. The Petition of the taxpayer, together with deficiency letter dated May 11, 1928, attached to which is "Statement of Returns Examined and Resulting Tax Liability;" also copy of deficiency letter dated May 11, 1928 to Zellerbach Paper Company, parent corporation of Petitioner, which letter, addressed to Zellerbach Paper Company, was referred to in deficiency letter addressed to Petitioner. [75]

3. Answer of Commissioner of Internal Revenue;

4. Stipulation between attorneys for respective parties filed with the Board of Tax Appeals on or about February 10th, 1931;

5. Motion to file Amended Petition and Amended Petition;

6. Commissioner's Answer to Amended Petition;

7. Findings of Fact and Opinion of the Board, including Dissenting Opinion;

8. Motion of Counsel for Respondent to find deficiency in sum of $32,990.18;

9. Notice under Rule 50;

10. Decision of the Board;

11. Petition for Review to the Circuit Court of Appeals for the Ninth Circuit;

12. Notice of Filing of Petition for Review;

13. Petitioner's Exhibit number one, being Income and Profits Tax Return for period ended April 30th, 1921, filed by Zellerbach Paper Company, parent of Petitioner, on behalf of the said Zellerbach Paper Company, this Petitioner, and Sanitary Products Corporation;

14. Respondent's Exhibit "A", being Income and Profits Tax Return filed by Zellerbach Paper Company, as successor to [76] A. S. Hopkins Company for the calendar year 1920;

15. Statement of Evidence;

16. This Praecipe;

the foregoing to be prepared, certified, and transmitted as required by law and the rules of the Circuit Court of Appeals for the Ninth Circuit.

JOHN FRANCIS NEYLAN,
J. PAUL MILLER,
Attorneys for Petitioner,
1 Montgomery Street,
San Francisco, California.

[Endorsed]: United States Board of Tax Appeals. Filed Oct. 31, 1932. [77]

[Title of Court and Cause.]

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 77, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 20th day of June, 1933.

[Seal] B. D. GAMBLE,
Clerk,
United States Board of Tax Appeals.

[Endorsed]: No. 7211. United States Circuit Court of Appeals for the Ninth Circuit. National Paper Products Company, a Corporation, Petitioner, vs. Guy T. Helvering, as Commissioner of Internal Revenue, Respondent. Transcript of the Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed July 3, 1933.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 7211

United States

Circuit Court of Appeals

For the Ninth Circuit.

NATIONAL PAPER PRODUCTS COMPANY, a Corporation,
Petitioner,

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,
Respondent.

No. 7211

Upon Petition to Review an Order of the United States Board of Tax Appeals.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

United States Circuit Court of Appeals for the Ninth Circuit

ZELLERBACH PAPER COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Board of Tax Appeals Docket No. 39701
NATIONAL PAPER PRODUCTS COMPANY, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Board of Tax Appeals Docket No. 39715
ZELLERBACH PAPER COMPANY, as transferee of A. S. Hopkins Company, Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondent.	Board of Tax Appeals Docket No. 39704

STIPULATION AND ORDER FOR CONSOLIDATION ON APPEAL.

Whereas, the three above-named cases, upon motion of John Francis Neylan, Counsel for Petitioners,

and consented to by Counsel for Respondent, were consolidated by order of the United States Board of Tax Appeals for trial; and

Whereas, after said trial by the United States Board of Tax Appeals of said consolidated cases, a joint opinion applying to said three cases was rendered by said Board; and

Whereas, petitions for the review of the decision of the United States Board of Tax Appeals by the United States Circuit Court of Appeals for the Ninth Circuit have been filed by the Petitioners with the Clerk of the United States Board of Tax Appeals, and the appeals perfected; and

Whereas, the same point of law is involved in each of said three cases, to-wit: is the collection from the Petitioners of the additional tax claimed by the Respondent for the fiscal year ending April 30th, 1921, barred by the Statute of Limitations; and

Whereas, it is the opinion of the respective Counsel for the parties to the said three cases that it would most suit their convenience in the handling of the said cases on appeal, and would also be of great assistance to the said United States Circuit Court of Appeals in its determination of said cases, if said cases should be consolidated for purposes of appeal;

It is hereby stipulated by and between John Francis Neylan and J. Paul Miller, Counsel for each of the Petitioners in the above-entitled cases, and C. M. Charest, General Counsel, Bureau of Internal Revenue, Counsel for the Respondents in each of said cases,

1. That said cases may be consolidated for the purpose of appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and for the purpose of oral argument before said Court;

2. That but a single printed transcript of record on appeal be prepared by and printed under the direction of the Clerk of said Court, said Clerk to avoid including in said printed transcript more than one copy of such matters and documents as are duplicated in the certified transcripts of record sent up to him by the Clerk of the United States Board of Tax Appeals;

3. That on all occasions, when pursuant to law or rule of court, the parties to said cases are privileged to file briefs, a single brief, rather than three, may be filed, wherein all matters involved in all of said cases may be discussed and argued;

4. That the said three cases may be heard by the United States Circuit Court of Appeals for the Ninth Circuit upon one oral argument before said Court.

Dated: San Francisco, California, February 1st, 1933.

JOHN FRANCIS NEYLAN
J. PAUL MILLER
Attorneys for Petitioner.
C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue,
Attorney for Respondents.

It is hereby ordered, that pursuant to the foregoing stipulation, the three above-named cases be

and they are hereby consolidated in accordance with the terms of said stipulation.

Dated: San Francisco, California, March 10, 1933.

CURTIS D. WILBUR,
United States Circuit Judge.

Now, June 20, 1933, the foregoing Stipulation and Order certified from the record as a true copy.

.....

Clerk Board of Tax Appeals.

[Endorsed]: United States Board of Tax Appeals. Received Mar. 14, 1933.

[Endorsed]: Filed Jul. 3, 1933. Paul P. O'Brien, Clerk.

[CLERK'S NOTE.]

Pursuant to stipulation of counsel for respective parties, and order of the court thereon, this case was consolidated with its companion case, No. 7209 entitled Zellerbach Paper Company, a corporation, petitioner, against Guy T. Helvering, as Comm'r of Int. Revenue, respondent, for briefing, argument and decision. Accordingly, all proceedings in the Circuit Court of Appeals for the Ninth Circuit in this case will be found at pages 122 to 144, inclusive, of the record in its companion case, and such proceedings, being similar, are not reprinted here in the interest of economy.

United States Circuit Court of Appeals
for the Ninth Circuit.

No. 7211

NATIONAL PAPER PRODUCTS COMPANY, a Corporation,

Petitioner,

vs.

GUY T. HELVERING, as Commissioner of Internal Revenue,

Respondent.

JUDGMENT.

Upon Petition to Review an Order of the United States Board of Tax Appeals.

This Cause came on to be heard on the Transcript of the Record from the United States Board of Tax Appeals and was duly submitted.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the Order of the said Board of Tax Appeals in this Cause be, and hereby is affirmed.

[Endorsed]: Filed and entered Feb. 28, 1934. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

[Title of Cause and Number.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, PAUL P. O'BRIEN, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing ninety-four pages, numbered from and including 1 to and including 94 to be a full, true and correct copy of the record as filed in this cause in the said Circuit Court of Appeals, together with stipulation and order consolidating this cause with its companion cause for briefing, argument and decision, and judgment filed and entered herein; and that all proceedings in this cause in this court were had jointly with its companion case, and that the proceedings as set forth as part of the record in that case covers these companion cases, and that this record together with the proceedings is a full, true and correct copy of the entire record of the above entitled cause in said Circuit Court of Appeals, excluding original exhibits transmitted herewith, made pursuant to request of counsel for petitioner, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, this 28th day of March, 1934.

[Seal] PAUL P. O'BRIEN,
Clerk.

[fol. 97] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 4, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.